

Appl. No. : 10/618,571
Filed : July 11, 2003

REMARKS

Prior to the foregoing amendments, Claims 1-45 were pending in the present application. In the Office Action mailed October 4, 2004, the Examiner rejected Claims 1-45.

Nonstatutory Double Patenting Rejections

The Examiner rejected Claims 22-45 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 22-23 of U.S. Patent No. 6,682,473 (Matsuura et al.) in view of U.S. Patent No. 6,127,010 (Rudy).

The Examiner explains that a timely filed terminal disclaimer can be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground, provided the conflicting application or patent is shown to be commonly owned with the present application. See 37 C.F.R. § 1.130(b). Applicant has enclosed herewith a terminal disclaimer in compliance with 37 C.F.R. § 1.321(c) that disclaims the terminal part of the statutory term of any patent granted on the present application that would extend beyond the expiration date of the of U.S. Patent No. 6,682,473. Accordingly, Applicant respectfully requests that the rejection of Claims 1-41 be withdrawn.

The Examiner provisionally rejected Claims 22-24 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-3, 13-16, and 29-32 of copending Application No. 10/391,447. Similarly, the Examiner issued a provisional obviousness-type double patenting rejection of Claims 22-45 in view of Claims 12-25 of copending Application No. 10/391,450. With respect to these provisional rejections, Applicant submits that it is premature to file terminal disclaimers in the present application until a patent issues from copending Application Nos. 10/391,447 and/or 10/391,450. Applicant agrees to file any necessary terminal disclaimers when a patent issues from copending Application Nos. 10/391,447 and/or 10/391,450, and requests that the provisional rejection of Claims 1-3, 13-16, and 29-32 be withdrawn.

Claim Rejections - 35 U.S.C. § 102(b)

The Examiner rejected Claims 1-21 under 35 U.S.C. § 102(b) as being anticipated by Rudy. The Examiner asserts that Rudy discloses a shock absorbing device having a flexible housing defining a chamber and at least one high vapor pressure media within the chamber (column 5, line 58 - column 6, line 12).

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Applicant respectfully traverses these rejections and the Examiner's characterization of the cited reference. Pending Claim 1 recites:

1. (Currently amended): An attenuation device, comprising:
a flexible housing comprising an outer wall and defining a chamber ~~[[therein;]]~~ therein, the housing configured to be introduced into a bladder while in a first, introduction configuration and then at least partially inflated into a second, implanted configuration; and
at least one high vapor pressure media having a vapor pressure approximately equal to the intravesical pressure of the bladder and a permeability of less than about 1 ml/day at body temperature through said outer ~~[[wall.]]~~ wall, the media causing a volume of a first gas to be driven through the housing until the partial pressure of the first gas inside the housing matches the partial pressure of the first gas within the bladder.

Applicant respectfully submits that Rudy fails to teach or suggest the unique combination of features recited by Claim 1. For example, Rudy does not teach an attenuation device having a high vapor pressure media with a vapor pressure approximately equal to the intravesical pressure of the bladder and a permeability of less than about 1 ml/day at body temperature through the outer wall of the flexible housing. Also, Rudy does not teach an attenuation device having a high pressure media which causes a volume of a first gas (e.g., air) to be driven through the housing until the partial pressure of the first gas inside the housing matches the partial pressure of the first gas within the bladder. Furthermore, Rudy does not disclose a flexible housing that is configured to be introduced into the bladder while in a first, introduction configuration and then at least partially inflated into a second, implanted configuration.

Claims 2-21, which depend from Claim 1, are believed to be patentable for the reasons stated above with respect to Claim 1, and because of the additional limitations set forth therein. Accordingly, Applicant respectfully requests that the rejection of Claims 1-21 be withdrawn.

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In view of the foregoing, Applicant respectfully submits that the pending claims of the present application are in condition for allowance, and such action is earnestly solicited. If, however, any questions remain, the Examiner is cordially invited to contact the undersigned so that any such matter may be promptly resolved. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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